

DEC 15 2008

BEFORE THE DEPARTMENT OF INSURANCE  
STATE OF NEBRASKA

FILED

IN THE MATTER OF THE	)	ORDER APPROVING ACQUISITION
ACQUISITION OF CONTROL OF	)	
COMMONWEALTH LAND TITLE	)	CAUSE NO. C-1741
INSURANCE COMPANY, IN	)	
REHABILITATION and	)	
LAWYERS TITLE INSURANCE	)	
CORPORATION, IN	)	
REHABILITATION.	)	

On December 9, 2008, Stewart Title Guaranty Company ("Applicant") filed an application ("Form A") seeking approval to acquire control of Commonwealth Land Title Insurance Company, in Rehabilitation, and Lawyers Title Insurance Corporation, in Rehabilitation, (collectively "Title Insurers"), Nebraska domiciled title insurance companies. The application was filed pursuant to the Insurance Holding Company System Act, *Neb. Rev. Stat.* §44-2120, §44-2126 (Reissue 2004). The filing was subsequently supplemented on December 12, 2008 and December 15, 2008. A Notice of Public Hearing was issued December 9, 2008.

On December 15, 2008, a public hearing was held at the Nebraska Department of Insurance ("Department"). Angela Comeau, a certified court reporter, recorded the hearing. Christine Neighbors, General Counsel, represented the Department and Jim Nixon and Bruce Ramage appeared on behalf of the Department. Applicant was represented by Rodney Confer, Esq., of Knudsen Berkheimer Richardson & Endacott. Applicant presented testimony in favor of the acquisition through Malcolm Morris, Chairman, Stewart Title Guaranty Company. Exhibits were offered by Applicant and the

Department, and received into the record. Applicant waived the twenty day notice of hearing. Applicant provided the Title Insurers with at least seven days' notice of hearing.

#### STATEMENT OF ISSUE

The issue in this proceeding is whether any of the disqualifying conditions set forth in *Neb. Rev. Stat.* §44-2127(1) exist with regard to the application to acquire control of the Title Insurers. On the basis of the filings, correspondence and information provided to the Department, the Director of Insurance ("Director") approves the application and finds, concludes and orders as follows:

#### FINDINGS OF FACT

A. Commonwealth Land Title Insurance Company and Lawyers Title Insurance Corporation.

On November 26, 2008, the Department received a verified Form A from the Applicant for approval to acquire control of the Title Insurers through the purchase of Title Insurers' stock from the parent corporation, LandAmerica Financial Group, Inc., ("LFG"). The application and subsequent amendments were filed pursuant to the Insurance Holding Company System Act, *Neb. Rev. Stat.* §44-2120, *et seq.*, specifically §44-2126. The acquisition will result in Applicant acquiring control of the Title Insurers as control is defined in the Act.

Commonwealth Land Title Insurance Company, in Rehabilitation, is organized under and governed by the laws of the State of Nebraska and obtained its Certificate of Authority to transact title insurance business in this state on November 11, 1958. It is authorized to transact insurance in 48 other states plus the District of Columbia.

Lawyers Title Insurance Corporation, in Rehabilitation, is organized under and governed

by the laws of the State of Nebraska and obtained its Certificate of Authority to transact title insurance business in this state on May 19, 1954. It is authorized to transact insurance in 48 other states plus the District of Columbia.

The Title Insurers were ordered into rehabilitation on November 26, 2008, in Cases CI08-5131 and CI08-5132, in the District Court of Lancaster County, Nebraska, due to their deteriorating financial condition. Also on or about November 26, 2008, LFG filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Eastern District of Virginia, Case No.: 08-35994. A hearing in the bankruptcy court is scheduled for December 16, 2008, to consider Applicant's offer which will be filed in the LFG proceedings.

B. Applicant.

Applicant is a wholly owned subsidiary of Stewart Information Services Corporation ("STC"), a publicly traded corporation organized under the laws of the State of Delaware. STC is a provider, through its subsidiaries, of title insurance, specialty insurance, claims management services, and information services. Through its subsidiaries and affiliates, Applicant provides core title insurance, escrow, and other title-related services including collection and trust activities, trustee's sales guarantees, recordings, and reconveyances.

Although Stewart Title Guaranty Company is referenced in the Form A filing as the Applicant, the ultimate controlling person exercising indirect control over the Nebraska domestic Title Insurers is STC. STC's stock is currently owned by various

public investors. To STC's knowledge, no person holds ten percent or more of its voting securities.

Applicant's market share of all insurance regulated title services provided in Nebraska is currently 7.23%, with its national market share of such title services including Nebraska, being 12.47%.

Applicant has filed all the documents and information required by law and requested by the Department.

C. Grounds to Disqualify as Set Forth in *Neb. Rev. Stat.* §44-2127(1).

(1) Requirements to Transact Insurance, *Neb. Rev. Stat.* §44-2127(1)(a).

By filing this Form A application, Applicant requests approval from the Director to acquire all of the issued and outstanding shares of Title Insurers. The total amount of consideration for the purchase of the Title Insurers is approximately \$256,000,000. Additionally, the Applicant has committed to contributing \$157,000,000 upon closing into the Title Insurers in order to recapitalize the companies so they may continue to write insurance for the lines they are presently authorized to write. The remainder of the consideration will be paid to LFG for distribution through the bankruptcy estate.

Applicant will fund the purchase and recapitalization through cash on hand, admissible securities, a subordinated note, and shares of its common stock.

(2) Effect on Competition in this State or Risk of Monopoly, *Neb. Rev. Stat.* §44-2127(1)(b).

Nationally, Applicant will hold approximately 32.03% of the title insurance market if this acquisition is approved. Under current law, the Department is restricted to opining only with regard to the competitive impact on Nebraska.

As regards the Nebraska marketplace, Applicant will hold approximately 28.94% of the Nebraska title insurance market if the application is approved. This is only 2% more than the current leader in the Nebraska market, Old Republic National Title Insurance Company. Therefore, this transaction is not problematic from a competitive analysis. Nevertheless, title insurance historically has been a permitted oligopoly, with roughly 90% of all title insurance written by insurers under the control of five groups as a permissible concentration. There have been larger concentrations of market shares based upon acknowledgement of specific laws in Nebraska governing title concentration which do not exist with any other lines of insurance. This concentration is permissible in title insurance under the state action doctrine provided a state exercises sufficient independent judgment and control over these issues <sup>1</sup>.

Nebraska exercises this judgment and control in two regards. First, Nebraska requires prior approval of rates. The scheme requires detailed rate submissions with deliberate analysis of need and impact on the market place. Moreover, *Neb. Rev. Stat.* §44-1991 sets forth specific requirements in the event concentration exceeds 20% in any one insurer. Nebraska has a scheme to permit concentration in excess of 20% based on considerations contained in *Neb. Rev. Stat.* §44-1991(2). It is in the best interest of the public to apply this analysis conservatively to the entire Stewart group. In so doing, it

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<sup>1</sup> Federal Trade Commission v Ticor Title Insurance Company, 504 US 621, 112 SCT 2169 (1992).

cannot be said that the acquisition adversely affects the financial solidity of Applicant based upon financial information filed with the Department, a factor set forth at *Neb. Rev. Stat. §44-1991(2)(a)*. Moreover, it cannot be said that *Neb. Rev. Stat. §44-1991(2)(b)* would prohibit the transaction. Roughly 91% of all title insurance business in Nebraska is transacted through independent agents. The title insurers have a long history of doing business in the state and do not impact this decision one way or another under *Neb. Rev. Stat. §44-1991(2)(c)*.

As regards *Neb. Rev. Stat. §44-1991(2)(d)*, reinsurance arrangements are widely available both with domestic insurers and through nonaffiliated reinsurers. *Neb. Rev. Stat. §44-1991(2)(e)* addresses the profitability of the acquired business. The Title Insurers have lost substantial surplus and are not profitable. *Neb. Rev. Stat. §44-1991(2)(f)* is not applicable. *Neb. Rev. Stat. §44-1991(2)(g)* allows consideration of "any other circumstance deemed appropriate." In this instance, the Title Insurers are in rehabilitation with deteriorating financial condition, and without recapitalization by LFG, the Title Insurers must be sold or ordered to cease writing. The gravity of a lack of guaranty fund protection for current policyholders nationwide and the risk of harm to them must be weighed against competitive implications on Nebraskans that can be monitored effectively.

(3) The financial condition of Applicant, *Neb. Rev. Stat. §44-2127(c)*. Applicant is regulated by the Texas Department of Insurance. The financial condition of Applicant is strong. Financial information provided to the Department does not indicate

this would be a concern, although Applicant, along with its competitors are immersed in a troubled market with revenues on the decline.

(4) Future Plans of Applicant for Title Insurers, *Neb. Rev. Stat. §44-2127(d)*.

Applicant has no plans to declare an extraordinary dividend, liquidate the Title Insurers, sell the assets of or consolidate or merge the Title Insurers with any person without the prior approval of the Director. Applicant does intend to change the management of the Title Insurers to include persons currently managing Applicant's title insurance companies. In addition, Applicant will enter into a Transition Services Agreement with LFG to continue to use services currently provided to the Title Insurers by affiliates of LFG that are not being acquired until Applicant makes necessary arrangements to replace said services.

(5) Competence of Applicant, *Neb. Rev. Stat. §44-2127(e)*.

Applicant is currently in the title insurance business and appreciate the challenges of the current marketplace. Applicant does intend to change the management of the Title Insurers.

(6) Demutualization, *Neb. Rev. Stat. §44-2127(f)* is not applicable.

(7) Impact on the Public, *Neb. Rev. Stat. §44-2127(g)*.

Applicant acknowledges that this transaction also requires approval by the Federal Bankruptcy Court in the Eastern District of Virginia and it is possible that clearance must be obtained under the federal Hart-Scott-Rodino Act by the Federal Trade Commission. Since Applicant is in the business of title insurance, the Director has considered, among other things, the impact upon competition in the title insurance business and weighed the

public benefits of going forward with this acquisition, and determined the public benefits of proceeding with the acquisition exceed the benefits of disapproving the sale in attempt to maintain current market share concentration.

### CONCLUSIONS OF LAW

1. The Department and Director have jurisdiction over the subject matter of this proceeding.
2. On the basis of the materials filed, correspondence received and evidence presented at the hearing, the Director has reason to believe that:
  - a. After the acquisition, the Title Insurers will satisfy the requirements for issuance of a Certificate of Authority to conduct business of title insurance in the State of Nebraska.
  - b. The effect of the acquisition will not substantially lessen the competition in insurance in the State of Nebraska nor tend to create a monopoly therein nor violate the laws of the State of Nebraska.
  - c. The financial condition of Applicant is such that it would not jeopardize the financial stability of the Title Insurers or prejudice the interest of the policyholders of the Title Insurers.
  - d. The Applicant has no plans or proposals to liquidate the Title Insurers, to sell the assets of any of the Title Insurers without the approval of the Department, to consolidate or merge any of the Title Insurers with any person or persons without approval of the Department, or to make any other material change in the business operations or corporate structures of management which would be unfair and unreasonable to policyholders of the Title Insurers and not in the public interest.
  - e. The competence, experience and integrity of those persons who would control the operation of the Title Insurers are such that it would be in the interest of the policyholders of the Title Insurers and the public to allow the acquisition.
  - f. Applicant is not subject to the provisions of *Neb. Rev. Stat. §44-6115* under the Demutualization Act; and
  - g. The acquisition is not likely to be hazardous or prejudicial to the public.



ORDER

IT IS THEREFORE ORDERED that the Applicant is approved to acquire all of the issued and outstanding shares of the Title Insurers which will result in Applicant acquiring control of the Title Insurers.

Within fifteen (15) days after the closing of this transaction, Applicant shall file an amendment to its Insurance Holding Company System Registration Statement in accordance with *Neb. Rev. Stat. §44-2132, et seq.*

Dated this 15th day of December, 2008.

STATE OF NEBRASKA  
DEPARTMENT OF INSURANCE

  
ANN M. FROHMAN  
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was sent to Malcolm S. Morris, Chairman, Stewart Title Guaranty Company, 1980 Post Oak Blvd., Suite 800, Houston, TX 77056 by electronic and U.S. Mail, postage prepaid, on this 15 day of December, 2008.

